

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Petition for Rulemaking of Fibertech)
Networks, LCC)

RM-11303

COMMENTS OF THE REAL ACCESS ALLIANCE

Introduction

The Real Access Alliance (the “RAA”)¹ respectfully submits these Comments in response to the Public Notice, DA 05-3182, released by the Commission on December 14, 2005 in response to a petition for rulemaking (the “Petition”) filed by Fibertech Networks, LLC (“Fibertech”). Fibertech has asked that the Commission adopt a number of standard practices related to pole and conduit access by competitive providers. One of these proposed practices would require incumbent local exchange carriers (“LECs”) to “share building-entry conduit with competitive LECs.” The RAA supports the growth of competition in the delivery of telecommunications services, and does not oppose the Petition. The measures proposed in the Petition, including the provisions related to sharing of conduit, do not appear to implicate the

¹ The members of the Real Access Alliance are: the Building Owners and Managers Association International (“BOMA”), the Institute of Real Estate Management (“IREM”), the International Council of Shopping Centers (“ICSC”), the National Apartment Association (“NAA”), the National Association of Industrial and Office Properties (“NAIOP”), the National Association of Realtors (“NAR”), the National Association of Real Estate Investment Trusts (“NAREIT”), the National Multi-Housing Council (“NMHC”), and The Real Estate Roundtable. A fuller description of the parties is attached hereto as Exhibit A.

rights of property owners. Nevertheless, the RAA urges the Commission to consider those rights in its consideration of the Petition and any proposals that might be put forward by other parties.

Discussion

A. The Real Estate Industry Supports Competition in the Delivery of Telecommunications Services.

As the Real Access Alliance has demonstrated in other contexts, the real estate industry supports the growth of competition in the delivery of telecommunications services.² For example, the owners of commercial office space have devoted a great deal of attention to the problem of attracting providers of competitive services to their buildings, and as a general rule office properties are served by multiple facilities-based providers.³ Similarly, residential property owners would like their tenants to have competitive options.⁴ Of course, the Commission's rules have allowed non-facilities-based providers to serve customers in all kinds of buildings, and the RAA has never objected to the provision of service by such providers in any type of building or real estate development.

The RAA and the real estate industry in general, however, have opposed efforts to require property owners to grant physical access to their buildings, or to interfere with the ability of property owners to manage their buildings.⁵ In addressing that issue, the RAA has not taken a

² Comments of the Real Access Alliance, WT Docket No. 99-217 (filed Aug. 27, 1999) ("*RAA Competitive Networks Comments*"), at 4-26; Further Comments of the Real Access Alliance, WT Docket No. 99-217 (filed Jan. 22, 2001) ("*RAA Competitive Networks Further Comments*"), at 8-28; Further Reply Comments of the Real Access Alliance, WT Docket No. 99-217 (filed Feb. 21, 2001) ("*RAA Competitive Networks Further Reply Comments*"), at 7-14.

³ *RAA Competitive Networks Further Reply Comments* at 8-14.

⁴ *RAA Competitive Networks Further Comments* at 61-65.

⁵ See generally *RAA Competitive Networks Comments*, *RAA Competitive Networks Further Comments*.

position for or against any particular sector of the telecommunications industry, but has expressed its views regardless of which parties were affected.⁶ The Commission has respected the RAA's concerns, and has recognized the limitations imposed by relevant court decisions, such as *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982).⁷

B. The Real Access Alliance Does Not Oppose the Petition, So Long as the Rights and Obligations of Building Owners are Respected.

The Fibertech Petition appears to be well within the bounds of reason and the Commission's order in the *Competitive Networks* proceeding. The Petition does not ask the Commission to grant competitive LECs any rights with respect to building owners, and it appears to presume that competitive LECs must obtain the permission of a building owner to install their facilities in a building. Fibertech also appears to respect the concerns of property owners with respect to the costs associated with granting access. Accordingly, so long as the Petition is interpreted as requesting regulation only of the practices of incumbent LECs, and is not interpreted as seeking regulation of building owners or a grant of additional rights enforceable against building owners, the RAA has no objection to the Petition. Similarly, as long as other commenters do not propose expansion of Fibertech's proposals in ways that might implicate private property rights, we do not object to Commission action on the Petition.

⁶ See, e.g., *RAA Competitive Networks Comments* at 27-33 (discussing problems with access by competitive LECs and incumbent LECs), 46-48 (noting incumbent LEC monopoly power), 60-69 (describing practical concerns regardless of nature of entrant); *RAA Competitive Networks Further Comments* at 31-33 (examples of problems with different types of providers).

⁷ See *Promotion of Competitive Networks in Local Telecommunications Markets*, WT Docket No.99-217, First Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Red 22,983, 23,022-23,024 (2000), at ¶¶ 87-90 (declining to grant right of access as against building owners under 47 U.S.C. § 224).

We must also note, however, that building and fire codes require that certain elements of a building, including walls, floors, and shafts, provide specified levels of fire resistance based on a variety of factors, including type of construction, occupancy classification, and building height and area. Consequently, the installation of cable in conduit or inner ducts may be subject to building and safety code requirements. These codes are typically promulgated by national standard-setting bodies and are adopted by state and local governments, and impose certain obligations on building owners.⁸ It is possible that Commission action in this matter could inadvertently raise issues under such codes.⁹ We therefore request that the Commission ensure that any action on the Petition does not contravene or create any conflict with any existing requirements.

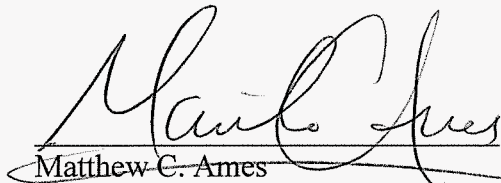
⁸ For instance, the International Codes Council promulgates the International Building Code, the International Residential Code, and the International Fire Code. The National Fire Protection Association promulgates The Uniform Fire Code®, the Building Construction and Safety Code®, and the National Electrical Code.

⁹ The kinds of issues that these codes address and that may arise with the installation of cable include: (1) requirements for cabling to meet certain smoke and/or fire test criteria; (2) requirements for cabling to be protected (encased in materials with a fire protection rating such as metal conduit or ducts); (3) requirements that the fire-resistance rating of all walls, floors, shafts, and other assemblies be maintained where penetrations are made (for cable, pipe, conduit, etc.) through the use of approved penetration protection materials; and (4) requirements for removal of abandoned cabling or labeling of such cable for future use.

CONCLUSION

For the reasons indicated above, the Real Access Alliance does not oppose the Petition, but urges the Commission to carefully consider the possible effects on building owners of any decision.

Respectfully submitted,


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APPENDIX A

MEMBERS OF THE REAL ACCESS ALLIANCE

- Founded in 1907, the Building Owners and Managers Association (“BOMA”) International is an international federation of more than 90 local associations and affiliated organizations. BOMA’s 19,000-plus members own or manage more than 9 billion square feet of commercial properties in North America and abroad. The mission of BOMA International is to enhance the human, intellectual and physical assets of the commercial real estate industry through advocacy, education, research, standards and information.
- The Institute of Real Estate Management (“IREM”) educates real estate managers, certifies the competence and professionalism of individuals and organizations engaged in real estate management, serves as an advocate on issues affecting the industry, and enhances and supports its members' professional competence so they can better identify and meet the needs of those who use their services. IREM was established in 1933 and has 10,000 members across the country.
- The International Council of Shopping Centers (“ICSC”) is the trade association of the shopping center industry. Its 38,000 members in the United States, Canada, and more than 70 other countries represent owners, developers, retailers, lenders, and all others having a professional interest in the shopping center industry. ICSC’s 34,000 United States members represent almost all of the 43,661 shopping centers in the United States.
- The National Apartment Association (“NAA”) has been serving the apartment industry for 60 years. It is the largest industry-wide, nonprofit trade association devoted solely to the needs of the apartment industry. NAA represents approximately 29,597 rental housing professionals holding responsibility for more than 4,911,000 apartment households nationwide.
- The National Association of Industrial and Office Properties (“NAIOP”) is the trade association for developers, owners, and investors in industrial, office, and related commercial real estate. NAIOP is comprised of over 9,500 members in 46 North American chapters and offers its members business and networking opportunities, education programs, research on trends and innovations, and strong legislative representation.
- The National Association of Real Estate Investment Trusts (“NAREIT”) is the national trade association for real estate investment trusts (REITs) and publicly-traded real estate companies. Its members are REITs and other businesses that own, operate, and finance income-producing real estate, as well as those firms and individuals that advise, study and service those businesses.
- The National Association of Realtors (“NAR”) is the nation’s largest professional association, representing more than 720,000 members. Founded in 1908, the NAR is composed of residential and commercial realtors who are brokers, salespeople, property managers, appraisers, counselors and others engaged in all aspects of the real estate industry. The association works to preserve the free enterprise system and the right to own, buy, and sell real property.

- The National Multi-Housing Council (“NMHC”) represents the interests of the larger and most prominent firms in the multi-family rental housing industry. NMHC’s members are engaged in all aspects of the development and operation of rental housing, including the ownership, construction, finance, and management of such properties.
- The Real Estate Roundtable (“RER”) provides Washington representation on national policy issues vital to commercial and income-producing real estate. RER addresses capital and credit, tax, environmental, technology and other investment-related issues. RER members are senior executives from more than 200 U.S. public and privately owned companies across all segments of the commercial real estate industry.